

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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HARRY POWELL,

Plaintiff/Counter-Defendant-  
Appellee,

v

RON NEWMAN,

Defendant/Counter-Plaintiff,

and

JOHNNIE PLAYER,

Defendant/Counter-Plaintiff-  
Appellant.

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UNPUBLISHED

October 10, 2006

No. 262621

Genesee Circuit Court

LC No. 03-077844-CZ

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant Player<sup>1</sup> appeals as of right from a circuit court order denying in part his motion to alter a default judgment entered in favor of plaintiff for \$223,418.20. Defendant argues the trial court erred in denying his motion to set aside the default judgment. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased two vehicles from defendants that were later confiscated by the police because they were stolen. Plaintiff filed a complaint against both defendants, and after Player repeatedly failed to appear for his deposition, the trial court entered the default judgment that underlies this appeal. Player filed a motion for relief from judgment pursuant to MCR 2.612(C)(1)(f). The court denied the motion, but did reduce the amount of attorney fees awarded to plaintiff.

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<sup>1</sup> Defendant Newman failed to file an appellate brief, and this Court dismissed his appeal.

On appeal, Player asserts that the default judgment was improper because plaintiff's complaint failed to state a cause of action. It appears Player is challenging the trial court's denial of his motion for relief from default judgment, which cited MCR 2.612(C)(1)(f). This Court reviews a trial court's decision on a motion to set aside a prior judgment for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

MCR 2.612(C)(1)(f), the only sub-section that might apply here, provides that the court may relieve a party from judgment for "[a]ny other reason justifying relief from the operation of the judgment." Three requirements must be satisfied for relief to be granted under MCR 2.612(C)(1)(f):

(1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. [*Heugel, supra*, pp 478-479 (citations omitted).]

"Generally, relief is granted under subsection (f) only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered." *Id.*, p 479 (citations omitted).

Player argues on appeal essentially only that plaintiff's complaint was deficient because it did not specify with particularity the roles that each defendant played in the sale of the stolen vehicles. However, if Player believed that the complaint was too vague, he should have filed a motion for a more definite statement pursuant to MCR 2.115(A). We hold that lack of precision in the complaint is simply not the sort of extraordinary circumstance that mandates setting aside the judgment to achieve justice, and we note that here plaintiff is the only party not accountable for improper conduct.

We further find that plaintiff's complaint was not deficient, but we nonetheless address Player's argument briefly. Player cites two authorities to support his claim that plaintiff's complaint failed to state a cause of action, but neither case actually supports his argument. First, *Frow v De La Vega*, 82 US (15 Wall) 552, 554; 21 L Ed 60 (1872), addresses whether a court may enter a default judgment against one defendant while the case against the remaining defendants is pending and the alleged liability is joint. Here no case is pending against any of the defendants, and *Frow* is inapplicable. Player relies on *Marshall Lasser, PC v George*, 252 Mich App 104, 112; 651 NW2d 158 (2002), for the proposition that MCL 600.2919a requires the complainant to specify "who acted as the purported converter and receiver of converted property." MCL 600.2919a includes no such requirement, nor does *George, supra* suggest that it does. Player has failed to cite any authority that supports his position that plaintiff's complaint failed to state a cause of action.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Kathleen Jansen  
/s/ Jessica R. Cooper